

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

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CIV. 11-4062

CAROLINE STOKKE,

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Plaintiff,

:

VS.

ANSWER

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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

•

Defendant.

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Defendant State Farm Mutual Automobile Insurance Company, for its Answer to Plaintiff's Complaint, states and alleges as follows:

FIRST DEFENSE

1. Said Complaint fails to state a claim or a cause of action against Defendant upon which relief can be granted.

SECOND DEFENSE

2. Defendant denies each and every allegation, matter and thing contained in said Complaint except such as are hereinafter specifically admitted or qualified.

3. Defendant is without sufficient information to affirm or deny the allegations contained in Paragraph 1 of Plaintiff's Complaint.

4. Defendant admits that it is an insurance company incorporated under the

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laws of Illinois and is licensed to do business in the State of South Dakota.

5. Defendant admits that it issued a policy of automobile insurance to Plaintiff and that under the terms of the policy the insured is entitled to the amount of money which reasonably and fairly will compensate the insured subject to the under insurance policy limits but only if such claimed damages exceed the available liability limits.

6. Defendant admits that Plaintiff sustained injury in a December 17, 2009, motor vehicle collision at the fault of Krystal Tiffany but denies that Plaintiff was injured in the amount and to the extent alleged in her Complaint and remits Plaintiff to her strict proof of such claimed injuries and damages.

7. Defendant admits consenting to Plaintiff's settlement of the tort claim against Krystal Tiffany and waiving its right to subrogation of UIM benefits in order to facilitate the settlement.

8. Defendant admits denying Plaintiff's demand that Defendant tender the UIM limits after a reasonable and thorough investigation of Plaintiff's claim.

9. Defendant has fully complied with the terms and conditions of the policy of insurance.

10. Defendant has, at all times, acted in good faith.

11. Plaintiff's claim for insurance benefits is fairly debatable.

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THIRD DEFENSE

12. Plaintiff has improperly joined a claim for bad faith with a claim for breach of contract and such joinder unduly prejudices Defendant to try both actions in the same proceeding.

13. Plaintiff's purported claim for bad faith has not accrued in that no adjudication has been rendered on Plaintiff's count for breach of contract.

14. In further answering, and as an affirmative defense, Plaintiff failed to mitigate her damages, barring Plaintiff's recovery herein.

WHEREFORE, Defendant State Farm Mutual Automobile Insurance Company prays that Plaintiff's Complaint be dismissed upon the merits and that Defendant State Farm Mutual Automobile Insurance Company have and recover its costs and disbursements herein.

Dated this 19th day of May, 2011.

FULLER & SABERS, LLP

/s/ William Fuller
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DEFENDANT DEMANDS TRIAL BY JURY ON ALL ISSUES OF FACT

Certificate of Service

I certify that on the 19th day of May, 2011, a true and correct copy of the foregoing Answer was served via E-Filing upon the following:

Mr. Brian Radke
Mr. Ryan Sittner
Radke Law Office, P.C.
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Sioux Falls, SD 57105
Attorneys for Plaintiff

/s/ William Fuller
One of the Attorneys for Defendants